

d.) Remarks.

Applicant has amended claims 1, 2, 12, 13, 21, 24, 28, 33, 36, 41, 43, 47, 48, 51, 58, 60, 62, 69, 70 and 74, and has added new claims 76-81.

Claims 2, 51 and 62 have been amended to recite that the spectrometer may be either hyperspectral or multispectral, support for which can be found in the specification at paragraph [0061]. Claims 28, 33, 36, 47, 48, 58, 60, 69 and 70 have been amended to correct dependency for proper antecedent basis. Claim 43 has been amended to correct a typographical error. Applicant has deleted the term "infrared" from claims 1, 2, 24, 47, 48, 58 and 74.

Claims 1, 24, 47 and 58 have been amended to recite that the distal collection end of the collection fiber directly contacts the balloon wall adjacent to an exposed tissue surface of interest. Support for these amendments can be found throughout the specification, and in particular, for example, at paragraphs [0044] and [0045], and Figure 1. Claim 43 has been amended to recite that the distal collection end of the collection fiber is fixed to an outer surface of the balloon. Support for this amendment can be found throughout the specification, and in particular, for example, at paragraph [0054] and Figure 3. Claim 74 has been amended to recite that the distal collection end of the collection fiber is in apposition with a surface of interest. Support for this amendment can be found at paragraph [0051] and Figure 2.

Finally, Applicant has added the aspects of visible, ultraviolet and near infrared radiation to the previously recited infrared radiation collection or conduction to amended claims 12, 13, 21 and 41, and in new claims 76-81. Support for these wavelength regions can be found throughout the specification, and at paragraph [0074].

No new matter has been added or new issues raised, and claims 1-5, 7-45, 47-51 and 53-81 are currently pending.

Remarks Regarding 35 U.S.C. § 102(b)

Claims 1-5, 7-45, 47-51 and 53-75 stand rejected, under 35 U.S.C. § 102(b), as allegedly anticipated by Kittrell et al. (US Patent No. 5,106,387). Applicant respectfully traverses this rejection.

Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention. *See RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). “The identical invention must be shown in as complete detail as is contained in the patent claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Further, it is not enough that the cited reference disclose all the claimed elements in isolation, but rather, it must disclose each element of the claimed invention “arranged as in the claim.” *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983). Kittrell does not disclose the elements of the claimed invention in isolation, much less “arranged as in the claim[s].”

Kittrell employs an optical shield, which mechanically displaces blood and introduces a separate space between the fiber optic and a covering layer. Kittrell, column 4, lines 41-53; column 5, line 3 – column 6, line 10. Kittrell stresses the importance of its optical shield as a solution to excessive heating during bare fiber tissue removal, as a protective means for internal components of medical devices, and as a key to providing a clear field of view of target tissue. *Id.* Thus, Kittrell emphasizes the need for a spacer layer that interposes between the optic fiber and the target, and highlights that “[i]n all cases the optical shield of the invention provides the means for controlled delivery of light to the tissue...” Column 6, lines 8-10.

Solely to expedite prosecution, Applicant has amended independent claims 1, 24, 43, 47, 58, and 74 to recite direct contact -- directly or through the balloon wall -- of the distal end of the collection fiber of the probe with the area of interest. *See* Applicant’s Figures 1-4. Accordingly, in stark contrast with Kittrell, Applicant’s claimed invention avoids the use of a spacer region by directly contacting the probe with the optic target. Applicant thus minimizes optical loss and provides the advantage of unimpeded optical measurements. *See* specification at [0041] and [0046].

Because one or more elements recited in the claims, as amended to expedite prosecution, are not disclosed or suggested by Kittrell, the present claims are not anticipated by the cited reference. Although an obviousness rejection was not asserted, Applicant points out that Kittrell teaches away from direct contact and emphasizes the need for a spacer region in all cases. Kittrell’s optical shield and spacing is not present in, and indeed would not provide the advantages of, Applicant’s claimed invention.

For at least all of these reasons, Applicant respectfully requests that the rejection of claims 1-5, 7-45, 47-51 and 53-75 under 35 U.S.C. § 102(b) be withdrawn.

Conclusion

In view of the foregoing amendments and/or remarks, reconsideration of the application and issuance of a Notice of Allowance is respectfully requested.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the number below.

Should additional fees be necessary in connection with the filing of this Responsive Amendment, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge **Deposit Account No. 14-1437 for any such fees referencing attorney Docket No. 8118.003.USDV**, and Applicant hereby petitions for any needed extension of time not otherwise accounted for with this submission.

Date: February 23, 2008

Customer No. 69911

Novak Druce + Quigg LLP
1000 West Tower
1300 I (Eye) Street, NW
Washington, DC 20005
(202) 659-0100 (telephone)
(202) 659-0105 (facsimile)

Respectfully submitted,
Novak Druce + Quigg LLP

By


James Remenick
Registration No. 36,902